

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

Crl.Rev.Pet.No. 3406 of 2003 ()

**AGAINST THE JUDGMENT IN CRA 305/2000 OF ADDITIONAL SESSIONS COURT,
ALAPPUZHA DATED 29.10.2001**

**AGAINST THE JUDGMENT IN CC 230/1999 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, RAMANKARI DATED 8.11.2000**

REVISION PETITIONER/APPELLANT/ACCUSED:

**RAJEEVAN @ BABU
S/O. VASUDEVAN, APPISSERYIL VEEDU
WARD NO.3, VELIYANAD,
ALAPPUZHA DISTRICT**

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT/RESPONDENT/COMPLAINANT:

**STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM**

BY PUBLIC PROSECUTOR SRI. K.K. RAJEEV

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
09-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

shg/

K.RAMAKRISHNAN, J

Crl.R.P.No.3406 OF 2003

Dated this the 9th day of January, 2015

O R D E R

Accused in CC.No.230/1999 on the file of Judicial First Class Magistrate Court, Ramankary is the revision petitioner herein.

2. The revision petitioner was charge sheeted by the Sub Inspector of Police, Ramankary in Crime No.15/99 of Ramankary police station originated for the offence under sections 294b, 323 and 326 of the Indian Penal Code.

3. The case of the prosecution in nutshell was that on 23.01.1999 at about 2.30 a.m, while the defacto complainant was watching the temple festival from the temple ground of S.N.D.P temple situated at Kunnamkary. At that time the revision petitioner came there, attacked him with the wooden block (idikatta) and caused fracture to his nose it is a grievous injury and the revision petitioner abused obscene words and beat and kicked him and thereby he had committed the offence punishable under sections 294b, 323 and 326 of the Indian Penal Code.

4. After investigation, final report was filed, and it was taken on file as CC.No.230/1999 of Judicial First Class Magistrate Court, Ramankary. When the revision petitioner

appeared before the court below, after hearing both sides charge under sections 294b, 323 and 326 of the Indian Penal Code was framed and the same was read over and explained to him and he pleaded not guilty. In order to prove the case of the prosecution, PWs 1 to 7 were examined and Exts.P1 to P5 were marked on their side. After closure of the prosecution evidence, the revision petitioner was questioned under section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the prosecution's evidence. He had further stated that he had not committed any offence and he is innocent of the same. No evidence was adduced on his side in defence. After considering the evidence on record, the court below found the revision petitioner not guilty under sections 294b and 323 of the Indian Penal Code and acquitted him of those charges under section 248(1) of the Code of Criminal Procedure, but found him guilty under section 326 of the Indian penal Code and convicted him thereunder and sentenced him to undergo rigorous imprisonment for six months. Aggrieved by the same, he filed Crl.Appeal No.305/2000 before the Sessions Court, Alappuzha, which was made over to Additional Sessions Court, Alappuzha for disposal. The learned Additional Sessions Judge, by the impugned judgment dismissed the appeal confirming the order of

conviction and sentence passed by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioner - accused before the court below.

5. Heard the counsel for the revision petitioner and the learned Public Prosecutor.

6. The counsel for the revision petitioner submitted that except the interested testimony of PW1 there is no other evidence supported the case of the prosecution. PWs 1 to 3, the alleged eye witnesses did not support the case of the prosecution. Further, the evidence of PW5, the doctor will go to show that the x-ray which shows nasal bone fracture in which it was not noted from where it was taken and when it was taken. Further, the evidence of PW6, will go to show that there is no enmity for the revision petitioner to attack him and his evidence alone without corroboration is not sufficient to convict the revision petitioner for the offence alleged. Further, the weapon alleged to be have been used has not been recovered. So, the courts below were not justified in convicting the revision petitioner for the offence under section 326 of the Indian penal Code and he prayed for acquittal of the revision petitioner.

7. On the other hand, the learned Public Prosecutor submitted that the evidence of PW6 coupled with the evidence of PW5, the doctor will go to show that he sustained grievous

injury using a dangerous weapon in the incident and there is nothing to disbelieve their evidence and the courts below were perfectly justified in convicting the revision petitioner for the offence alleged.

8. The case of the prosecution as emerged from the prosecution witnesses was as follows:-

On 23.01.1999 at about 2.30 a.m, while PW6 the injured was watching the temple festival from the temple ground of S.N.D.P. Temple, Kannamkary, the revision petitioner came there and abused him and hit him with the wooden block (idikatta) and thereafter beat him and kicked him and he was taken to the hospital from where he was seen by PW5, who issued Ext.P2 wound certificate. He was treated there as inpatient for nasal bone fracture and Ext.P3 treatment certificate was also given to prove that fact. While he was in the hospital, CW7 came to the hospital and recorded his Ext.P4 First Information Statement and registered Ext.P5 First Information Report as Crime No.15/99 of Ramankary police station against the revision petitioner under sections 294b, 323 and 326 of the Indian Penal Code. Thereafter, the investigation was undertaken by PW7 who went to the place of occurrence and prepared Ext.P1 scene mahazar in the presence of PW4 and another. He questioned the witnesses and recorded the

statement. He completed the investigation and submitted a final report against the revision petitioner.

9. PWs 1 to 3 were the alleged eye witnesses in the incident. But, they did not support the case of the prosecution and they were declared hostile. But, it will be seen from the evidence of PW2 that though he did not see the incident, he came to understand that there was quarrel ensued between PW6 and the revision petitioner. Though he was hostile, his evidence to that extent can be relied on for the purpose of coming to the conclusion that on the particular day some incident happened between PW6 and the revision petitioner.

10. PW6 is the injured. He had categorically stated that while he was watching the temple festival on that day, the revision petitioner came there and abused him and hit him with a wooden block on his face and also kicked him and beat him and he had further stated that he went to Thiruvalla Government Hospital and treated from there. The only suggestion given to him was that the revision petitioner had not attacked him and he had picked up a quarrel with the festival committee members and in that there was some push and pull and he fell down and sustained injuries. The fact that he sustained fracture to his nose in the incident is not disputed but only suggestion given was that it was not inflicted by the

revision petitioner. Further, it will be seen from the evidence of PW5 that he had seen the injured on 23.01.1999 at 4.00 a.m and the cause of injury was given as ഇടിക്കട്ടുകൊണ്ടും കൈകൊണ്ടും ഇടിക്കുകയും അടിക്കുകയും നാഭിക്ക് തൊഴിക്കുകയും ചെയ്തതിൽവെച്ചു at about 2.30 a.m on 23.01.1999 at Kunnamkary. It is also seen in column No.14, that x-ray nasal bone fracture present in the bracket it was mentioned x-ray No.705 dated 23.01.1999, Pushpagiri hospital. The second x-ray PNS, it was noted that no fracture seen. The discharge certificate issued from the same hospital showed that he was treated there for nasal bone fracture. If really it is an old fracture, then it would have been noted in the wound certificate itself on examination of the x-ray. Further, the result of the investigation mentioned in the wound certificate itself shows that the x-ray was taken on the same day as instructed from the hospital authorities as x-ray facilities were not available there and on verification of the x-ray produced, he was treated for nasal bone fracture. So, the submission made by the counsel for the revision petitioner that the evidence adduced is not sufficient to come to the conclusion that he sustained nasal bone fracture in the incident as alleged by the prosecution.

11. It is true that in the wound certificate the name of the assailant was not mentioned. But it is settled law that it is

not necessary that the name of the assailant should be mentioned in the wound certificate and the doctor must probe in to the same regarding the person who inflicted the injury as well. He need only mention the cause of injury, pose the injuries and he will have to give his opinion as to whether that would be possible as alleged by the injured only. So, merely because, the name of the assailant was not mentioned in the wound certificate alone is not sufficient to disbelieve the case of the prosecution.

12. It is true that PW1 had stated that from the place of occurrence itself the statement of PW6 was taken by the police present there. It may be mentioned here that the some police persons would have been deputed to prevent law and order of situation in the temple premisses and when some incident reported to them, they are not expected to take down the statement of the witnesses at that place but probably as instructed by them, the injured would have gone to the hospital from there when intimation was received police would have come and recorded his statement. So, it cannot be treated as the first statement that has been given by the injured and recorded by the police in respect of the incident which has been suppressed by him as contended by the counsel for the revision petitioner so as to disbelieve the case of the prosecution.

13. It is true that the alleged weapon used has not been recovered. It is settled law that merely because the weapon has not been recovered is not a ground for disbelieve the case of the prosecution. PW6 had categorically stated that he was hit by a wooden block (idikatta) and the same cause of injury was given before the doctor as well and PW5 doctor has deposed that the injury could have been caused as alleged. So, under the circumstances the courts below were perfectly justified in coming to the conclusion that injury was caused to PW6 by using dangerous weapon and the fracture was caused to his nasal bone on account of the hit which is a grievous injury and thereby the offence under section 326 of the Indian Penal Code has been committed. There is nothing to disbelieve the evidence of PW6, regarding the incident as happened to by him. It is also settled law that there is no bar for the court to rely on the evidence given by the injured alone to face conviction if it instals the confidence of the court. There is nothing to brought out in the evidence of PW6 to falsely implicate the revision petitioner in a case like this. Further, the evidence of PW2 also will go to show that there was some incident happened between PW6 and the revision petitioner but he had only stated that he did not see the incident. So, to that extent his evidence corroborated the evidence of PW6 regarding the involvement of

the revision petitioner in the commission of the offence. So, under the circumstances the courts below were perfectly justified in coming to the conclusion that prosecution had proved beyond reasonable doubt that the revision petitioner had committed the offence punishable under section 326 of the Indian Penal Code and rightly convicted him for the said offence and no infirmity has been committed by the court below in arriving at such a conclusion warranting interference by this court invoking the revision jurisdiction.

14. As regards the sentence is concerned, the court below had sentenced him to undergo rigorous imprisonment for six months and that was confirmed by the appellate court. The injured was aged 35 years at the time of occurrence. The prosecution has no case that he is habitual offender as well. It is true that grievous injury has been sustained by the injured. The counsel for the revision petitioner submitted that the revision petitioner is now suffering from cancer. Considering these aspects, this court feels that the substantive sentence can be reduced and some compensation can be awarded to the victim that will meet the ends of justice. So, imposing a sentence of one month simple imprisonment and also direction to pay compensation of Rs.15,000/- to PW6 in default to undergo simple imprisonment for one month will be sufficient

and that will meet the ends of justice. So, the sentence of six months of rigorous imprisonment is set aside and the same is modified as follows:-

The revision petitioner is sentenced to undergo simple imprisonment for one month and also to pay a compensation of Rs.15,000/- to PW6 in default to undergo simple imprisonment for one month more under section 357(3) of the Code of Criminal Procedure. If the compensation amount is realised, the court below is directed to pay the same to PW6. The set off is allowed for the period of detention if any undergone by him in connection with the case.

With the above modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly. Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.RAMAKRISHNAN, JUDGE

R.AV

//True Copy//

PA to Judge